

In Re: Munusami

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Court : Chennai

Decided On : Sep-23-1970

Reported in : AIR1971Mad259; 1971CriLJ957; (1971)2MLJ30

Judge : Sadasivam and ;K.N. Mudaliyar, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 325 and 392

Appeal No. : Criminal Appeal No. 859 of 1969

Appellant : In Re: Munusami

Judgement :

K.N. Mudaliyar, J.

1. This is an appeal by one Munuswamy against his conviction and sentence for offences under Section 392, Indian Penal Code, and Section 302, Indian Penal Code for having committed the murder of one Nagammal, by throttling her after relieving her of a cloth-pouch containing Rs. 6.

2. In brief, the skeletal outline of the prosecution case is spoken to by P. Ws. 1, 2, 3, 4 and 5. P.W. 1 is the son of Nagammal (deceased). P.W. 2 is Nagammal (deceased). P.Ws. 3 and 4 were working in the neighbouring fields near the scene of occurrence. P.W. 5 is the husband of P.W. 2 and the son-in-law of Nagammal (deceased).

3. P.Ws. 1, 2, 5 and Nagammal the deceased, were living together in the field shed of P.W. 5 at Chikkampatti. The appellant is the farm servant of one Natesan, son of P.W. 5, by his first wife, who is living away, separate from his father. On 18th May, 1969, P.W. 5 left Chikkampatti for Giddampatti Thanda for the purpose of participating in a panchayat. Prior to his departure for the panchayat, P.W. 5 asked P.W. 1 to sow gingelly seeds in his land and also plough the same. P.W. 1 left for the field some 150 yards away from the field shed for sowing and ploughing the land. At about 2-30 p.m. P.W. 1 returned to the field hut for taking water. As he neared the field hut, he saw his mother Nagammal lying on the ground on her back, with the appellant sitting on her, throttling her neck with his hands and biting her face and with his hands and biting her face and shoulder. He raised a hue and cry and rushed to the appellant. P.W. 2 returned on hearing the cries of P.W. 1 in apprehending the appellant and tying him to a tree nearby.

Nagammal, the deceased, was questioned and she told them that the appellant snatched away the pouch containing some money, when she refused to give him some change, and that when she came out to the kalam to call for aid and help, the appellant pushed her down and throttled her. The appellant was also questioned and he confessed, having committed the offence. Not merely that. The appellant also handed over back the pouch containing some money, some betel nuts and a chunnambu dabba, M. Os. 1 to 4. By then, P.W. 3 Parvathi and P.W. 4. By then, P.W. 3 Parvathi and P.W. 4 Chinna Iyathan came to the scene of occurrence. They were also told about the occurrence by Nagammal, the deceased. On their questioning the appellant, he again confessed, having committed the offence. Subsequently Natesan and others came to the scene of occurrence. P.W. 1 went to Kondagampatti to make a report to the village munsif but the village munsif was not available. Night set in. Only on the next morning, P.W. 1 took the appellant and Nagammal to Kadathur police station, by making the journey to Bommidi by cart and thereafter by bus. Ultimately he gave the report, Ext. P. 1, at 3-15 p.m. on 19th May, 1969. Even when the report was unnecessary for us to notice the other features of the prosecution case, as spoken to by the other witnesses, in view of the question to be determined solely on the medical testimony in this case.

4. P.W. 9 is a Civil Assistant Surgeon, Government Head Quarter's Hospital, Dharmapuri. He conducted the autopsy on the dead body of Nagammal at 12-15 p.m. on 20th May, 1969. He found nine external injuries on the dead body of Nagammal. On dissection, he found that both the cornua of the hyoid bone were fractured. He gave the opinion that the deceased would appear to have died of asphyxia as a result of throttling. He also stated that death must have occurred some 20 to 24 hours prior to the commencement of the post-mortem examination. The nine injuries have been described more elaborately in paragraph 4 of the judgment of the learned Sessions Judge. In the cross-examination of this witness, it has been elicited that in the case of asphyxia due to throttling, death need not be instantaneous, and even where the hyoid bone is broken, death need not be instantaneous, and the victim can survive for some time. It is regrettable to notice that there was no further pursuit on this aspect of the matter in the cross-examination of the doctor, particularly, when the doctor stated that the victim could survive for some time, whereas Nagammal survived certainly for 24 hours nearly. In fact, the doctor has stated that the fact the cornua of both the bones of hyoid bone were broken does not show that there is nothing to do with the air passage. After stating so, the doctor further states that once the air passage is obstructed, supply of oxygen to the brain becomes restricted. so even if death does not ensue immediately, the brain suffers a stroke resulting in damage and death after a few hours.

5. The plea of the appellant is one of admission of his guilt in the court of the committing Magistrate, one of total denial in the court of Sessions and one of accident in his appeal petition before this Court. In fact, he states that at 2-30 p.m. he returned to the field hut to drink water. At that time Nagammal, the deceased was lying in front of the house. He worked in the hot sun with very bad eye sight and therefore he slipped and fell on Nagammal. As he fell down, he put his hand on her neck and rose up. As soon as he rose up P.W. 1 came to his house and saw him (Munusamy) raised from his mother. P.W. 1 came running towards the appellant. Munusamy, shouting. On hearing the noise P.W. 2 returned and saw what was happening. They tied the appellant to a tree. Nagammal stated that the appellant throttled her neck to snatch away the money and that the appellant snatched away the money. But the appellant maintained that he slipped and fell on

the old woman.

6. It emerges clearly from the entire prosecution testimony that Nagammal, after the occurrence was in a position to talk. In fact, it is the consistent evidence of the prosecution witnesses that she told them that the appellant had throttled her. She was alive till the next day, for a period of nearly 24 hours. In fact, there is the evidence that she took also some food in the shape of idlies, as spoken to by P.W.

5. This state of evidence about her surviving for a period of 24 hours, more or less, and her being in a physical condition to speak about the overt act committed against her by the appellant would raise a considerable doubt as to whether she died of asphyxia, as a result of throttling. Eminent textbook writers on the subject of medical testimony have not given any instance where victim has survived for 24 hours with the physical features of the victim taking food and talking. In fact, in Taylor's Principles and Practice of medical Jurisprudence. 12th Ed. edited by Keith Simpson, one finds the following passage at page 359, which is illuminating on this aspect of the matter-

'If, as a consequence of any such condition being unrelieved for several minutes, a sufficient embarrassment of breathing ensues, unconsciousness and death will supervene. The question is often put as to how long an interval of time might have elapsed between the significant part of the assault and loss of consciousness, and also between the onset of this and the time of death. These are very difficult questions, for the time interval must vary according to the rapidity and completeness of obstruction, the physical fitness of the subject and the rate at which the remaining oxygen in the blood and tissues is utilised.'

John Glaister on his book 'Medical Jurisprudence and Toxicology' observes as follows at pages 181-182:--

'One of our case of throttling was of rather an unusual nature since the victim of the attack survived for about three-quarters of an hour, and was able to return to his home both by bus and by walking. Post-mortem dissection showed marked extravagation in the deeper tissues of the floor of the mouth, more marked on the right side. On the right side of the neck, the tissues around the hyoid bone were bruised, and to a lesser extent on the left side. From the top of the thyroid cartilage

down to the upper border of the breast-bone and extending laterally to the deeper tissues on both sides of the neck, there was massive bruising. The bruising extended to the posterior wall of the pharynx and to the adjacent wall of the oesophagus. It travelled literally from the posterior border of the thyroid cartilage to the opening of the larynx. The epiglottis was congested, the left anterior part was oedematous and on the right anterior part there was bruising. Bruising was also present on the right lateral and anterior walls of the upper part of the larynx. The right vocal cord was bruised and edematous with a markedly diminished air channel. Further bruising affected the lining membrane of the oesophagus. The right superior cornu of the thyroid cartilage was fractured together with the left cornu of the hyoid bone. The right cornu was more mobile at its synchondrosis than its neighbour. Death resulted from oedema glottidis.'

7. In Modi's Text-book of Medical Jurisprudence and Toxicology while describing the three stages of asphyxia and the symptoms thereof, the learned author makes the following observation at page 124:--

'The three stages last for about three to five minutes before death takes place. They may be prolonged for two or three times as long occasionally asphyxia may bring about death almost instantly.'

According to the estimate of the learned author, it would appear that the maximum time generally might be as long as about 15 minutes.

8. In the face of the opinion of the celebrated text-book writers, quoted above, we have grave doubts as to whether the deceased Nagammal died of asphyxia as a result of throttling, particularly in the light of her survival for 24 hours in a fit physical condition to talk and eat. These two physical symptoms would raise a considerable doubt about the death of Nagammal as a result of asphyxia caused by throttling.

9. We believe the evidence of P.Ws. 1 to 5. We also believed the extra-judicial confession made by the appellant to some of the prosecution witnesses immediately. It may be remembered that the appellant was immediately tied to a tree by P.Ws. 1 and 2 and he was produced before the police on the next day.

There is also the immediate narration of the entire occurrence as seen by P.W. 1 to other prosecution witnesses. We believe the entire evidence, including the admission of his guilt by the appellant in the court of the committing Magistrate. We reject the theory of accident now trotted out at a very late stage in his appeal petition.

10. In the circumstances of the case, as proved by the prosecution, we cannot but hold that the offence made out by the prosecution is one under Sec. 325, Indian Penal Code, and find him guilty only under Section 325, Indian Penal Code. We alter his conviction to one under Section 325 Indian Penal Code, and sentence him to rigorous imprisonment for a period of seven years. The conviction for the offence under Section 392, Indian Penal Code is confirmed. But no separate sentence is awarded.

11. Order accordingly.

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